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5 **UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF NEW JERSEY**

7 **BETH WIGHT,**)
8 Plaintiff,) **Case No.:**
9 v.)
10 **CAPITAL ONE,**) **COMPLAINT AND DEMAND**
11 Defendant.) **FOR JURY TRIAL**

12 **COMPLAINT**

13
14 BETH WIGHT (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN,
15 P.C., alleges the following against CAPITAL ONE (“Defendant”):

16 **INTRODUCTION**

17 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act
18 (“TCPA”), 47 U.S.C. § 227 *et seq.*

19 **JURISDICTION AND VENUE**

20 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v.
21 Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

22 3. Defendant conducts business in the Commonwealth of New Jersey and as such,
23 personal jurisdiction is established.

24 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).
25

PARTIES

5. Plaintiff is a natural person residing in Normandy Beach, New Jersey, 08739.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a corporation that has its mailing address located at 1680 Capital One Drive, Mclean, VA 22101.

8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Plaintiff has a cellular telephone number that she has had for more than one year.

11. Plaintiff has only used this number as a cellular telephone number.

12. Beginning May 2015, Defendant called Plaintiff on her cellular telephone, on average, three (3) or more times a day.

13. Defendant also communicated to Plaintiff using an automatic telephone dialing system and automatic and/or pre-recorded messages.

14. Defendant’s calls and voicemail messages would include a pre-recorded voice stating “This is Linda from Capital One. We have an important business matter to discuss”.

15. Defendant’s harassing calls derived from numbers including, but not limited to (800) 955-6600. The undersigned has confirmed that this number belongs to the Defendant.

16. Defendant’s calls would include a noticeable ten to fifteen seconds of delay before Plaintiff would be transferred to one of Defendant’s representatives.

17. Defendant’s telephone calls were not made for “emergency purposes;” rather, Defendant was attempting to collect \$1,000 for an account that Plaintiff has with Defendant.

1 18. On several occasions, included in early to mid-September 2015, Plaintiff spoke
2 with Defendant and revoked any consent that may have been previously given to Defendant to
3 call her cellular telephone number.

4 19. Plaintiff also specifically stated at that time that she could not afford to make any
5 payments and would contact Defendant when she was able to make any payments.

6 20. Defendant proceeded to ignore Plaintiff's revocation and call her cellular
7 telephone number at least fifty (50) times through November 2015.

8 21. After Defendant continued to call Plaintiff repeatedly on her cellular telephone,
9 Plaintiff was forced to block calls from Defendant's phone numbers.

10 22. Upon information and belief, Defendant conducts business in a manner which
11 violates the Telephone Consumer Protection Act.

12
13 **DEFENDANT VIOLATED THE**
 TELEPHONE CONSUMER PROTECTION ACT

14 23. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at
15 length herein.

16 24. Defendant initiated automated calls to Plaintiff using an automatic telephone
17 dialing system and automatic and/or pre-recorded messages.

18 25. Defendant's calls to Plaintiff were not made for emergency purposes.

19 26. Defendant's calls to Plaintiff, in and after November 2015, were not made with
20 Plaintiff's prior express consent.

21 27. Defendant's acts as described above were done with malicious, intentional,
22 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
23 purpose of harassing Plaintiff.
24
25

1 28. The acts and/or omissions of Defendant were done unfairly, unlawfully,
2 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense,
3 legal justification or legal excuse.

4 29. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
5 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
6 damages.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, BETH WIGHT, respectfully prays for a judgment as follows:

- 9 a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
10 b. Statutory damages of \$500.00 per violative telephone call pursuant to 47
11 U.S.C. § 227(b)(3)(B);
12 c. Treble damages of \$1,500.00 per violative telephone call pursuant to 47
13 U.S.C. §227(b)(3);
14 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
15 e. Any other relief deemed appropriate by this Honorable Court.

16 **DEMAND FOR JURY TRIAL**

17 PLEASE TAKE NOTICE that Plaintiff, BETH WIGHT, demands a jury trial in this
18 case.
19

20 **CERTIFICATION PURSUANT TO L.CIV.R.11.2**

21 I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not
22 subject to any other action pending in any court, arbitration or administrative proceeding.
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4 RESPECTFULLY SUBMITTED,

5 DATED: 04/29/2016

KIMMEL & SILVERMAN, P.C.

6
7 By: /s/ Amy L. Bennecoff Ginsburg
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